



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0714; FRL-9670-3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, New Jersey, and Pennsylvania; Determinations of Attainment of the 1997 Annual Fine Particulate Standard for the Philadelphia-Wilmington Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making two determinations regarding the Philadelphia-Wilmington, PA-NJ- DE fine particulate (PM_{2.5}) nonattainment area (the Philadelphia Area). First, EPA is making a determination that the Philadelphia Area has attained the 1997 annual PM_{2.5} national ambient air quality standard (NAAQS) by its attainment date of April 5, 2010. This determination is based upon quality assured and certified ambient air monitoring data that show the area monitored attainment of the 1997 annual PM_{2.5} NAAQS for the 2007-2009 monitoring period. Second, EPA is making a clean data determination, finding that the Philadelphia Area has attained the 1997 PM_{2.5} NAAQS, based on quality assured and certified ambient air monitoring data for the 2007-2009 and 2008-2010 monitoring periods. In accordance with EPA's applicable PM_{2.5} implementation rule, this determination suspends the requirement for the Philadelphia Area to submit an attainment demonstration, reasonably available control measures/reasonably available control technology (RACM/RACT), a reasonable further progress (RFP) plan, and contingency measures related to attainment of the 1997 annual PM_{2.5} NAAQS for so long as the area continues to attain the 1997 annual PM_{2.5} NAAQS. These actions are being taken under the Clean Air Act (CAA).

DATES: This rule is effective on [insert date 30 days from date of publication in the Federal

Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2011-0714**. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning EPA's action related to Delaware or Pennsylvania, please contact Maria A. Pino, (215) 814-2181, or by e-mail at pino.maria@epa.gov. If you have questions concerning EPA's action related to New Jersey, please contact Henry Feingersh, (212) 637-3382, or by email at feingersh.henry@epa.gov.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this action.

I. Background

II. Summary of Actions

III. Summary of Public Comments and EPA Responses

IV. Final Actions

V. Statutory and Executive Order Reviews

I. Background

On January 23, 2012, EPA published a direct final rulemaking (77 FR 3147) and companion notice of proposed rulemaking (NPR) (77 FR 3223) for the States of Delaware and New Jersey and the Commonwealth of Pennsylvania (the States). In the January 23, 2012 rulemaking action, EPA proposed to determine that the Philadelphia Area attained the 1997 PM_{2.5} NAAQS by its attainment date, April 5, 2010. EPA also proposed to make a clean data determination, finding that the Philadelphia Area has attained the 1997 PM_{2.5} NAAQS.

Because EPA received adverse comment, EPA withdrew the direct final rule on March 13, 2012 (77 FR14697), and the direct final rule was converted to a proposed rule.

II. Summary of Actions

These actions do not constitute a redesignation to attainment under section 107(d)(3) of the CAA. The designation status of the Philadelphia Area will remain nonattainment for the 1997 annual PM_{2.5} NAAQS until such time as EPA determines that the Philadelphia area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

A. Determination of Attainment by the Attainment Date

EPA is making a determination that the Philadelphia Area has attained the 1997 annual PM_{2.5} NAAQS by its applicable attainment date of April 5, 2010. This determination is based upon

quality assured and certified ambient air monitoring data for the 2007-2009 monitoring period that shows the area has monitored attainment of the 1997 PM_{2.5} NAAQS during this monitoring period. Therefore, EPA has met its requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date. The effect of a final determination of attainment by the area's attainment date will be to discharge EPA's obligation under CAA section 179(c).

B. Clean Data Determination

EPA is making a determination that the Philadelphia Area is attaining the 1997 annual PM_{2.5} NAAQS. This determination is based upon quality assured and certified ambient air monitoring data that show the area has monitored attainment of the 1997 PM_{2.5} NAAQS for the 2007-2009 and 2008-2010 monitoring periods. This determination of attainment suspends the CAA requirements for the Philadelphia Area to submit an attainment demonstration and the associated RFP plan, contingency measures, RACM/RACT analysis, and any other planning requirements related to attainment of the 1997 annual PM_{2.5} NAAQS. These requirements remain suspended for so long as the area continues to attain the 1997 annual PM_{2.5} NAAQS.

The clean data determination suspends the requirement for the Philadelphia Area to submit an attainment demonstration, RACM/RACT, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 annual PM_{2.5} NAAQS. This suspension remains in effect until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 1997 annual PM_{2.5} NAAQS. This determination is separate from, and does not

influence or otherwise affect, any future designation determination or requirements for the Philadelphia Area based on any new or revised PM_{2.5} NAAQS. It remains in effect regardless of whether EPA designates the Philadelphia Area as a nonattainment area for purposes of any new or revised PM_{2.5} NAAQS. Although these requirements are suspended, EPA is not precluded from acting upon these elements. The States of Delaware and New Jersey, and the Commonwealth of Pennsylvania have submitted state implementation plan (SIP) revisions for their portions of the Philadelphia Area to EPA for review and approval.

C. Ambient Air Quality Monitoring Data

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the PM_{2.5} ambient air monitoring data for the monitoring periods 2007-2009 and 2008-2010 for the Philadelphia Area, as recorded in the EPA Air Quality System database. On the basis of that review, EPA has concluded that the Philadelphia Area attained the 1997 annual PM_{2.5} NAAQS based on data for the 2007-2009 and 2008-2010 monitoring periods. In the Technical Support Document (TSD) prepared for this action, EPA evaluates the air quality data for the Philadelphia Area. For details, please refer to EPA's TSD, which can be viewed at <http://www.regulations.gov>.

III. Summary of Public Comments and EPA Responses

On January 24, 2012, EPA received adverse comments on the direct final rule from Mr. Robert Ukeiley. A summary of the comments submitted and EPA's response is provided below

Comment: The commenter alleges that the determination of attainment here ("clean data

determination”) violates CAA section 110(l) because EPA has not completed its review of the PM_{2.5} NAAQS. The commenter asserts that the clean data determination should not be finalized until after EPA promulgates a new PM_{2.5} NAAQS.

Response: EPA’s rulemaking action here addresses only the 1997 annual PM_{2.5} NAAQS, and has no bearing on any other NAAQS, including any future revised NAAQS. Therefore, this comment is not relevant to this rulemaking action.

Comment: The commenter states that this clean data determination violates CAA section 110(l) because all other NAAQS would benefit from the Philadelphia Area fully implementing the 1997 annual PM_{2.5} NAAQS, including implementation of RACT. The commenter alleged that EPA failed to conduct an analysis of the impacts of the clean data determination, and this will interfere with other NAAQS attainment.

Response: CAA section 110(l) applies explicitly and only to a “revision to an implementation plan.” As set forth in the response to comment above, EPA’s rulemaking here is restricted to EPA’s determination, based on ambient air quality, that the Philadelphia Area is attaining the 1997 annual PM_{2.5} standard. It is not a SIP revision, and thus section 110(l) is by its own terms is not applicable to this rulemaking. It is not this determination of attainment, but rather EPA’s PM_{2.5} implementation rule, 40 CFR 51.1004(c), that specifies the consequence of the determination as suspension of the area's obligations to submit an attainment demonstration, a RFP plan, contingency measures and other planning requirements related to attainment as SIP revisions for as long as the area continues to attain. In any case, the requirements that are

suspended by the regulation are related solely to attainment for the 1997 annual PM_{2.5} standard. EPA is determining, and the commenter does not contest, that the area is attaining the 1997 annual PM_{2.5} standard, and that the suspension of attainment planning SIP submissions lasts only as long as the area is meeting that standard. No other requirements are suspended and no control measures in the SIP are being relaxed. This action has no effect on control measures, or air quality, in the area. In sum, no evaluation under section 110(l) is required by law, and even if such an evaluation were required, EPA would conclude that this determination of attainment would not interfere with attainment, reasonable further progress towards attainment, or any other applicable requirement of the CAA. EPA notes that this same individual submitted similar comments on determinations of attainment (“clean data determinations”) for the 1997 8-hour ozone NAAQS for the Pittsburgh-Beaver Valley nonattainment area in Pennsylvania (Pittsburgh Area) and the Charlotte-Gastonia-Rock Hill nonattainment area in North Carolina and South Carolina (Charlotte Area), and for the 1997 annual PM_{2.5} NAAQS for the Kentucky Portion of the Cincinnati-Hamilton nonattainment area (Cincinnati-Hamilton Area). EPA responded to those comments in final rulemaking actions for the Pittsburgh, Charlotte, and Cincinnati-Hamilton Areas, at 76 FR 31237, 76 FR 70656, and 76 FR 77903, respectively.

IV. Final Actions

EPA is making two determinations regarding the Philadelphia Area. First, EPA is making a clean data determination, finding that the Philadelphia Area has attained the 1997 annual PM_{2.5} NAAQS. This clean data determination is based upon quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 annual PM_{2.5} NAAQS for the 2007-2009 and 2008-2010 monitoring periods. This clean data determination suspends

the requirements for the Philadelphia Area to submit an attainment demonstration and associated RACM/RACT, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 annual PM_{2.5} NAAQS, as provided in 40 CFR 51.1004(c), so long as the area continues to attain the 1997 annual PM_{2.5} NAAQS. Second, pursuant to section 179(c) of the CAA, EPA is making a determination that the Philadelphia Area has attained the 1997 annual PM_{2.5} NAAQS by its attainment date, April 5, 2010. This determination is based upon quality assured, and certified ambient air monitoring data for the 2007-2009 monitoring period.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to

each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This determination that the Philadelphia Area has attained the 1997 annual PM_{2.5} NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and record-keeping requirements

Dated: March 28, 2012

W. C. Early, Acting
Regional Administrator,
Region III.

Dated: April 24, 2012

Judith A. Enck,
Regional Administrator,
Region II.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart I — Delaware

2. In §52.425 the existing paragraph is designated as paragraph (a), and paragraph (b) is added to read as follows:

§ 52.425 Determinations of attainment.

* * * * *

(b) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Philadelphia-Wilmington, PA-NJ-DE fine particle (PM_{2.5}) nonattainment area attained the 1997 annual PM_{2.5} National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Philadelphia-Wilmington, PA-NJ-DE PM_{2.5} nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

3. Section 52.427 is added to read as follows:

§ 52.427 Control strategy: Particulate matter.

Determination of attainment. EPA has determined, as of [Insert date of publication in the Federal Register], that based on 2007 to 2009 and 2008 to 2010 ambient air quality data, the

Philadelphia-Wilmington, PA-NJ-DE nonattainment area has attained the 1997 annual PM_{2.5} NAAQS. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual PM_{2.5} NAAQS.

Subpart FF—New Jersey

4. In §52.1576 the existing paragraph is designated as paragraph (a), and paragraph (b) is added to read as follows:

§ 52.1576 Determinations of attainment.

* * * * *

(b) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Philadelphia-Wilmington, PA-NJ-DE fine particle (PM_{2.5}) nonattainment area attained the 1997 annual PM_{2.5} National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Philadelphia-Wilmington, PA-NJ-DE PM_{2.5} nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

5. Section 52.1602 is amended by adding new paragraph (d) to read as follows:

§52.1602 Control strategy and regulations: PM_{2.5}.

* * * * *

(d) Determination of Attainment. EPA has determined, as of [Insert date of publication in the Federal Register], that the Philadelphia-Wilmington, PA-NJ-DE fine particle (PM_{2.5}) nonattainment area has attained the 1997 PM_{2.5} National Ambient Air Quality Standard. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 1997 PM_{2.5} NAAQS.

Subpart NN—Pennsylvania

6. Section 52.2056 is amended by adding paragraph (g) to read as follows:

§ 52.2056 Determinations of attainment.

* * * * *

(g) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Philadelphia-Wilmington, PA-NJ-DE fine particle (PM_{2.5}) nonattainment area attained the 1997 annual PM_{2.5} National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Philadelphia-Wilmington, PA-NJ-DE PM_{2.5} nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

7. Section 52.2059 is amended by adding paragraph (f) to read as follows:

§ 52.2059 Control strategy: Particulate matter.

* * * * *

(f) Determination of Attainment. EPA has determined, as of [Insert date of publication in the Federal Register], that based on 2007 to 2009 and 2008 to 2010 ambient air quality data, the Philadelphia-Wilmington, PA-NJ-DE nonattainment area has attained the 1997 annual PM_{2.5} NAAQS. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual PM_{2.5} NAAQS.

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